

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 02 PARIS 008390

SIPDIS

SENSITIVE

FOR EUR/WE--SBALL, EB/TRA--BMATTINGLY, S/CT--SKONTOS
DHS FOR TSA

E.O. 12958: N/A

TAGS: [FAIR](#) [FR](#) [PTER](#)

SUBJECT: FRANCE: GOVERNMENT CONCERNED ABOUT LEGAL BASIS FOR
NO-FLY/SELECTEE SYSTEM

REF: PARIS 08311

1. (SBU) SUMMARY: In a December 7 meeting with a French official, Emboffs reviewed current arrangements for implementing the No-Fly system in France, and discussed GOF concerns about its legal basis in U.S. domestic law and ICAO conventions. Our contact also raised the potential applicability of French data privacy law to No-Fly screening, and downplayed the likelihood of quick implementation of the Selectee Emergency Amendment (EA). Post requests guidance on how to respond to legal issues raised by the GOF. END SUMMARY

2. (SBU) Econoff and TSA representative (TSAR) met December 7 with Col. Pierre Edery, who recently replaced Col. Henri Schlienger as responsible for aviation security at the Secretariat Generale de la Defense Nationale (SGDN), the

SIPDIS

Prime Minister's coordinating office for anti-terrorism. He provided a read-out of the report delivered after the recent visit of a delegation from the Direction Generale de L'Aviation Civile (DGAC) to Washington, that had been requested by the GOF to better understand the operation of the U.S. No Fly and Selectee Emergency Amendments (EA)s and their implementation. We were able to provide a number of additions and corrections to information contained in the report, including the size of the No-Fly list, the different criteria for inclusion on the No-Fly or Selectee lists, and the different methods for transmitting APIS data to the USG.

3. (SBU) We also reviewed the specific arrangements the USG has established with the GOF for compliance with the No-Fly EA, pointing out that multiple notifications when we detect NF matches based on APIS data were particularly cumbersome to manage. Col. Edery appeared open to a greater role for the DGAC in "crisis management" of time-sensitive issues such as individual No-Fly cases. Issues involving larger numbers of flights or broader national interests were clearly in SGDN's purview (e.g. designation of "flights of interest" or discussions regarding the basic conditions for applying EA's or other issues requiring inter-ministerial coordination within the GOF).

4. (SBU) Edery also provided new insight into the basis for SGDN's concerns that application of U.S. EA's by French airlines in France stands on a shaky legal basis, noting that the GOF wished to make sure this would not be open to challenge in French courts. The DGAC's report raised a number of questions about the grounds for applying EA's to foreign airlines in the U.S., and for airlines to deny boarding to passengers on the No-Fly list. TSAR provided an explanation of the security components of U.S. licensing procedures for foreign carriers, as well as an explanation of the conditions of carriage which passengers agreed to upon purchase of a ticket.

5. (SBU) The report also apparently questioned whether article 13 of the ICAO convention provided adequate legal justification for the No-Fly system. While disclaiming any special juridical expertise, we suggested that he consider both article 13 and annex 17 as grounds supporting the No-Fly system. It was clear however that questions raised in the report were of considerable complexity: e.g. "can the exclusion of a flight because of the presence of a passenger on a watch-list not based on criteria admissible in normal jurisprudence be considered a "law" or "regulation" of a contracting state?" Edery said SGDN was on the verge of requesting that the MFA study the issue and provide them with an opinion. We agreed to meet again with Edery and SGDN legal staff next week to review issues and listen to their concerns in more detail.

6. (SBU) The DGAC report also raised the question (apparently shared by the Interior Ministry, the Transportation Ministry and Air France) as to whether the No-Fly list constituted an "interconnected database" (a new database constituted by merging two separate sets of information) that would require authorization by the National Commission for Data Privacy (CNIL) under the terms of a French law of January 6, 1978.

If this were the case, it could mean that provisions of the law such as notification of those included and seeking their consent before providing data to third parties would be applicable--not the optimum situation for anti-terrorist operations, as Col. Edery observed.

17. (SBU) The CNIL has expressed considerable reservations about the provisions in the anti-terrorism legislation currently under consideration that would provide the GOF with authority to collect APIS and PNR data on passengers arriving from or departing to countries outside of the EU (reftel). Edery told us SGDN sought to include explicit mandate for No-Fly and Selectee screening in the draft legislation, but had removed it due to opposition from the CNIL. They were now considering three possible means of providing legal grounding for No-Fly screening: CNIL authorization according to the 1978 law, specific legislation authorizing No-Fly screening, or a bi-lateral or multi-lateral agreement with the U.S. on aviation security. Prodded on the broad latitude that pending legislation would appear to give to GOF to screen passengers, he did not seem convinced that it would provide a sufficiently secure basis to protect No-fly cooperation with the U.S. from possible legal challenge.

18. (SBU) Finally, Col. Edery frankly admitted that while continuing French cooperation on No-Fly was not in doubt, current guidance from the Prime Minister's Office on the Selectee EA was not to move ahead at this time, while the GOF is involved in sensitive efforts to secure passage of the new anti-terrorism law.

19. (SBU) Comment: The pragmatic and frank tone of this conversation is encouraging, and we will seek to profit from this new attitude to make operational improvements in our No-fly arrangements with the French. Though GOF concerns about the applicability of their data privacy legislation to the No-Fly system appear to be sincere, they have so far not impeded its implementation here. After the expected adoption of the new anti-terrorism law in January, we should be prepared to renew our push for application of the Selectee EA. End comment.

10. (SBU) Action Request: Post requests guidance and additional information on the legal foundation of No-fly screening in domestic American law and the ICAO conventions to use in responding to GOF questions and concerns. Please visit Paris' Classified Website at:
<http://www.state.sgov.gov/p/eur/paris/index.cfm>

Stapleton